Laborers' Local 215, Laborers' International Union of North America, AFL-CIO (Research Cottrell, Inc.) *and* Paul Karas. Case 4-CB-4040

March 8, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On September 4, 1981, Administrative Law Judge Charles M. Williamson issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

CHARLES M. WILLIAMSON, Administrative Law Judge: This proceeding came to hearing before me in Wilkes-Barre, Pennsylvania, on March 23, 1981. The charge, alleging violation of Section 8(b)(1)(A) and (2) by Laborers' Local 215 (herein referred to as Respondent), was filed on June 13, 1980. The complaint issued on August 13, 1980. The complaint alleges that on or about April 21, May 22, and June 2, 1980, Respondent caused Research Cottrell, Inc. (herein referred to as the Employer), to discriminate against Paul Karas by "failing and refusing to refer Paul Karas to employment by Research because of the intra union activities of Paul Karas, and based on arbitrary, and discriminatory considerations." Subsequent portions of the complaint allege that Respondent breached its duty of fair representation by its failure and refusal to refer Karas and that Respondent violated Section 8(b)(1)(A) and (2) of the Act. Respondent, by its answer dated August 15, 1980, denied the commission of any unfair labor practices.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel[1] and Respondent, I find as follows:

FINDINGS OF FACT

I. JURISDICTION

The Employer is, and has been at all times material herein, a corporation engaged in the business of constructing cooling towers and has been a subcontractor of Bechtel Corporation at a power plant construction site in Berwick, Pennsylvania. During the past year, which period of time is representative of all times material herein, the Employer received more than $50,000 for performing services for Bechtel Corporation at the Berwick, Pennsylvania, construction site. During the past year, Bechtel Corporation purchased goods valued in excess of $50,000 directly from points and places outside the Commonwealth of Pennsylvania. The complaint alleges, Respondent admits, and I find that Research Cottrell, Inc., the Employer herein, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Karas' Layoff and Role in the Union Campaign*

Paul Karas, the Charging Party herein, was employed as a laborer by the Employer at Bechtel's power plant jobsite in Berwick, Pennsylvania, from March 1976, to February 1, 1980.[2] On the latter date, he was laid off because of lack of work occasioned by poor weather. At the time of the layoff, Karas went to Respondent's hiring hall and registered on the layoff list. Respondent and the Employer are parties to a collective-bargaining contract (Jt. Exh. 2) which, *inter alia*, requires the Employer to use Respondent's established hiring procedures. Joint Exhibit 1, the hiring hall procedures, show on their face a nonexclusive hiring hall arrangement. There is some evidence, however, that the practice of the Employer was to obtain its employees *only* through the hiring hall. Under the hiring hall procedures applicants are referred either in the order they signed the out-of-work list or, if requested by name by the Employer, without reference to their placement on the list. After signing the layoff list, Karas contacted the Employer's general labor foreman, Lonnie Clark, to ascertain whether he might be re-

[1] This term is used herein to designate counsel for the General Counsel.

[2] All dates will be 1980 unless otherwise designated.

called to work. Clark told him that when work was available, he would specifically ask for Karas.

Prior to the events outlined above Karas had been involved in an internal election campaign among Respondent's membership. One Henry De Polo had been Respondent's business manager for 25 years prior to his death in 1978. Anthony Pollick was appointed by the executive board to serve out the remainder of De Polo's last term which expired in May 1979 at which time an election would take place to select the new business manager. Pollick became a candidate in November 1978 for a full term as business manager. Karas initially supported Pollick, going so far as to place a Pollick sticker on his hard hat. While Karas denied that he ever campaigned for Pollick, it is apparent that he initially supported Pollick's candidacy and made that support known to fellow employees. Later, in January 1979, Karas switched and began to support a Charles De Polo, identified as the son of the deceased former business manager. Karas' support for De Polo was open and aggressive compared with his more limited activities on behalf of Pollick. Karas solicited house to house on weekends and placed a large De Polo sign on his truck. Pollick admitted at the hearing that Karas had informed him of the change in allegiance. Other incidents between the two I find to have taken place based on Karas' credited testimony.[3] Thus, sometime in March 1979, Pollick ran into Karas at the Berwick jobsite and told him he could not understand why Karas was supporting De Polo in light of a favor which Pollick had done Karas.[4] Karas told Pollick everyone had to make up his own mind. In May 1979, again at the Berwick jobsite, Pollick saw Karas, walked over, and rubbed a De Polo button Karas was wearing. Several days after the May 1979 election, Karas attempted to shake Pollick's hand in congratulation on his victory[5] and was told, "I don't shake hands with turncoats." I conclude that at least in May 1979 Pollick was resentful of Karas' turnabout.

B. *The Employer's Attempt To Recall Karas*

On March 18, the Employer began to recall laid-off employees. Karas initially heard a rumor that he was being requested by name, a fact which, if true (it was not), would have given him immediate priority.[6] In the result, Karas received no call from Respondent until August 5. At that time, he refused the referral because he was working elsewhere.

Karas and Lonnie Clark testified that on each of three occasions—April 19-21, May 22, and June 2—Clark requested Respondent to refer Karas for employment by name. On each of these occasions Clark told Karas that he had requested him by name. Clark testified that it was not his normal procedure to inform employees that they had been requested by name but he did so in Karas' case because Karas had previously inquired about the possibilities of recall, Clark had told him he would be, and Clark wanted Karas to know he was keeping his word. Karas testified that in each instance he made preparations to receive Respondent's telephone call. Thus, on April 21 (when Karas had to sign for unemployment) he allegedly made arrangements to have his mother-in-law, Lena Menichelli, at the house. Menichelli testified that she was at the Karas house on April 21 from about 8:30 a.m. to 1:30 p.m. and that Karas received no calls during that time. Pollick testified that he called Karas at 11 a.m. on April 21 and Respondent's records (G.C. Exh. 2) reflect a call made at that time with the notation "N.A." meaning "no answer." Karas and his wife, Ann Karas, testified that on May 17 their son (age 9 years) was taken to the hospital because of an asthma condition. The doctor recommended that their son be confined to home for a period of 10 days. The bill for this visit is in evidence as General Counsel's Exhibit 3. The General Counsel argues that the son would not have been left unattended during this time, based on the testimony of both Paul Karas and his wife. However, the record leaves open the possibility that there was some time during May 22 when no adult was present. Respondent's records show that it called Karas at 8:30 p.m. on May 22. (See G.C. Exh. 2.) Karas testified that he made arrangements "[to] make sure somebody was home at all times." Karas then stated that he "couldn't be sure" he had not left the house after 5 p.m. that day to go to a little league baseball game.[7] Karas had previously testified that, due to his son's condition, arrangements had been made to have someone with the boy at all times—Karas or his mother-in-law.[8] In answer to the question, "If you had left your house, what would you have done?" Karas replied, "Well, I would have told my wife I was leaving and she'd be there." Later, on cross-examination, Karas changed his story and insisted that he was home the evening of May 22.[9] Karas' wife stated on direct examination that she did not recall whether she went out on the evening of May 22. Karas' mother-in-law, as previously stated, was not asked about May 22, although Karas' wife asserted that she would have been there in her absence. I conclude on the basis of the above facts that Karas and his wife were, in fact, out of the house on the evening of May 22. I do not credit their conclusionary and shifting testimony that one or the other was home at all times that evening.[10]

[3] Pollick testified concerning several of these incidents but basically in the sense of not "remembering" their occurrence. Under these circumstances, I credit Karas.

[4] Helping get one of Karas' friends into the Local.

[5] Pollick won by a vote of 780 to 242. Joe Zalewski was present at the handshake incident but testified that he did not hear the reference to "turncoats" as he had turned around and directed his attention elsewhere. Zalewski is the steward and can be replaced by Pollick if the latter so desires.

[6] The General Counsel argues that this explains the discrepancy between the charge and the complaint. The charge gives March 17 as one of the dates on which Respondent discriminated while that date does not appear in the complaint. The May 22 date does not appear in the charge, but the parties stipulated that Karas was requested by the Employer on that date.

[7] Karas was on the little league board of directors and was assistant manager and equipment manager.

[8] The mother-in-law, who testified concerning the April date, was not asked about any visits by her or telephone calls during the son's illness in May. She did not testify concerning the June allegations.

[9] Significantly, Karas stated on cross-examination that when his uncle got home about 6 p.m. on May 22, he told Karas that the men called for work had reported to work. This fact is significant because, while this testimony does not establish that anyone had reported to work, if Karas' uncle said this, Karas would have been more likely to go to the little league game. Karas stated that Thursday night was a regular little league night.

[10] None of the Karas children testified.

Both Karas and his wife again testified that they were home at 2:50 p.m. on June 2 when Pollick asserted that he called to refer Karas to a job. Both denied receiving any call. Pollick testified that he called but there was no answer.

C. *Analysis*

The General Counsel contends that (1) the hiring hall was operated, *de facto*, on an exclusive basis; (2) Union Representative Pollick "faked" telephone calls to Karas to avoid referring him for employment; (3) Pollick did this because he wished to retaliate against Karas because of his union political activities of a year previous; and (4) Respondent thereby violated Section 8(b)(1)(A) and Section 8(b)(2) of the Act. The General Counsel cites *New York City Taxi Drivers Union, Local 3036, AFL-CIO (Taxi Maintenance Corp.)*, 231 NLRB 965, for the proposition that retaliation against union members for internal political activity designed to oust incumbent union leadership violates Section 8(b)(1)(A) and *Local 808, United Brotherhood of Carpenters (Building Contractors Association)*, 238 NLRB 735 (1978), to show that failure to refer an individual for discriminatory reasons in an exclusive hiring hall situation violates Section 8(b)(2). Granting validity, *arguendo*, to the General Counsel's legal contentions, I nevertheless do not find that the facts in this case support the General Counsel's contentions. Specifically, I find that Pollick made good-faith efforts to contact Karas to refer him to work in April, May, and June. I base this finding on the following considerations:

(1) As stated above, I do not credit either Karas or his wife concerning their alleged presence at home when Pollick called on May 22.

(2) There is a lapse of nearly a year between Karas' political activities which allegedly motivated Pollick's conduct and the alleged failure to refer. I find it exceedingly doubtful that Pollick lay in wait for a year to take his revenge even though he may have been resentful of Karas in 1979.

(3) Karas never inquired of anyone at the hiring hall as to why he was not contacted after he had been informed by Clark that he had been requested. His various explanations of this fact—that Pollick had been elected to do a "job" and it was his obligation to contact Karas or that it was a matter of "pride"—do not ring true. He was essentially unemployed at the relevant times herein[11] and the employment to be offered paid well.

(4) Karas seemed unsure, at times, as to Pollick's motives in allegedly not referring him for employment. At one point in his testimony Karas stated that Pollick retaliated against him "because of the involvement of my uncle in the [union] campaign." He then retreated from this statement, asserting that Pollick's actions were "just more or less to get at me, that's about it."

(5) Pollick credibly testified that two individuals—both on the opposing slate of candidates prior to the May 1979 election—tore down his campaign signs prior to the election. Both these men—Ron De Luca and Mike Gaydos—were referred out of the hiring hall on March 18 and 28, respectively. I do not believe Pollick would have retaliated against Karas for his routine campaigning while leaving these individuals untouched.

Conclusions of Law

1. Research Cottrell, Inc., herein designated the Employer, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Laborers' Local 215, Laborers' International Union of North America, AFL-CIO, herein designated Respondent, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not committed the unfair labor practices alleged in the complaint.

On the basis of the above findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[12]

The complaint herein is dismissed in its entirety.[13]

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[11] He received some moneys from his little league activities. Incredibly, he also testified that during this time he was performing services for free in order to ingratiate himself with Lulak who, he hoped, would give him employment. Apparently, he later went to work for Lulak.

[12] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[13] Errors in the transcript have been noted and corrected.